



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

Number: 95-2

Date: 6/16/95

ATHLETES, ATHLETIC ACTIVITIES OR EVENTS AND MOTOR VEHICLES IN LABELING AND ADVERTISING OF ALCOHOLIC BEVERAGES

Distilled Spirits Plants, Bonded Wineries, Breweries, Importers, and Others Concerned:

Purpose. The purpose of this circular is to advise industry members of a forthcoming ATF ruling relating to the depiction of athletes, athletic activities or events and motor vehicles in the labeling and advertising of alcoholic beverages. This circular and the forthcoming ruling provide guidelines and clarification which industry members can use in developing labels and advertisements which will comply with legal and regulatory requirements. The pertinent portions of the ruling read substantially as follows:

Background. In recent years, ATF has received numerous inquiries regarding the appearance of or reference to athletes, athletic activities or events, and motor vehicles on labels and in advertisements of alcoholic beverages. In particular, concern has surfaced as to the circumstances in which these depictions are permissible.

In particular, there has been significant discussion about the extent to which depictions of or references to athletes, athletic activities or athletic events mislead consumers of alcoholic beverages to believe that consumption of these products will increase their athletic prowess. There has also been discussion about the extent to which depictions of or references to motor vehicles may mislead consumers to believe that it is safe to operate a motor vehicle after consuming alcoholic beverages. ATF policy significantly limits the extent to which these sorts of depictions and references are permissible on labels and advertisements.

ATF Policy. ATF continues to enforce the provisions of the FAA Act and its implementing regulations which prohibit misleading labels and advertisements. However, we recognize that, in recent years, there have been changes in the levels of consumer awareness, changes in industry marketing techniques, and other changes in the marketplace. For example, in recent years, consumers have become much more aware of the effects of alcohol consumption, not only through the efforts of numerous consumer groups, but also through the efforts of both industry and Congress. Furthermore, with the enactment of the health warning statement Congress has attempted to remind the public about health hazards that may be associated with consumption or abuse of alcoholic beverages. These changes and the limitations in our statutory and regulatory authority provide the bases for changes in ATF policy regarding the depictions of or references to athletes, athletic activities or events, or motor vehicles in alcoholic beverage labeling and advertising.

ATF will not automatically consider deceptive or misleading each depiction of or reference to athletes, athletic activities or events, or motor vehicles used in alcoholic beverage labeling or advertising. ATF recognizes that some such depictions or references may appear on labels and in advertisements without being deceptive or misleading. Each such depiction or reference will be reviewed on a case-by-case basis to determine whether it is deceptive or misleading.

In reviewing labels and advertisements, ATF will base its conclusions on the totality of the message conveyed by the label or advertisement. ATF will not prohibit the mere appearance of athletes in labels or advertisements; rather, ATF will examine labels and advertisements in their entirety to determine whether the message conveyed in relation to the appearance of the athlete is deceptive or misleading. ATF is particularly sensitive to the influence athletes are known to have on youth as role models. This is particularly the case where active or recently retired athletes are concerned. Athletes, as role models, set a standard of conduct commonly emulated by youth who aspire to gain talent, success, and/or fame on a level comparable to the athlete's. ATF is concerned that the appearance of an athlete in a label or advertisement not convey a misleading impression to youth.

ATF recognizes that younger people (i.e., those below the legal age for purchase of alcoholic beverages) may be more susceptible to being misled by certain types of labels or advertisements than mature adults. In reviewing labels and advertisements containing references to athletes, athletic activities or events, or motor vehicles, ATF will be especially sensitive to whether such labels and advertisements would be likely to deceive or mislead youth to conclude or believe that consumption of an alcoholic beverage will increase their athletic prowess, enable them to perform at a level comparable to that of a famous athlete or, conversely, likely deceive or mislead youth to believe that such consumption will not inhibit athletic performance. ATF will be equally sensitive to labels and advertisements that would be likely to deceive or mislead youth to conclude or

believe that consumption of an alcoholic beverage will enable them to safely operate a motor vehicle or other machinery or equipment.

ATF will not approve applications for labels found to be misleading or deceptive and will initiate appropriate action against such labels and advertisements if they appear in the marketplace.

Examples. With the following examples, we have attempted to more clearly address what we consider both impermissible and permissible labeling and advertising conduct insofar as such conduct falls within the confines of our statutory authority. ATF considers the following examples of labels or advertisements to be unacceptable:

- (1) any label or advertisement which states that consumption of the alcoholic beverage will enhance athletic prowess, performance at athletic activities or events, health or conditioning;
- (2) any label or advertisement which depicts any individual (famous athlete or otherwise) consuming or about to consume an alcoholic beverage prior to or during an athletic activity or event;
- (3) any label or advertisement depicting consumption of an alcoholic beverage while the party consuming the beverage is seated in, about to enter, operating, or about to operate automobiles or other machinery.

Conversely, ATF considers the following examples of labels or advertisements to be acceptable as a general matter, provided they satisfy the criteria discussed above and are not otherwise in violation of applicable laws and regulations:

- (1) depictions of or references to athletes, including famous athletes, whether in motion or not and whether in uniform or not;
- (2) depictions of or references to motor vehicles or other machinery or equipment, whether in motion or not, whether occupied by a driver or not;
- (3) team logos;
- (4) schedules of athletic events; or
- (5) depictions of, references to or commemorations of specific events (e.g., an automobile race), specific cars or other equipment, such as hockey sticks, footballs, golf clubs, and the like, on alcoholic beverage labels or advertisements.

For a comprehensive discussion regarding these issues and the history giving rise to this Industry Circular and analogous ruling, please refer to the ruling, which is available upon request.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to: Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

John W. Magaw
Director

Department of the Treasury
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